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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------------|
| 10/507,231 | 09/09/2004 | Rona L. Reid | 62413A | 2122 |
| 109 7590 02/27/2009 The Dow Chemical Company Intellectual Property Section P.O. Box 1967 Midland, MI 48641-1967 | | | | |
| | | | EXAMINER KHAN, AMINA S | |
| | | | ART UNIT 1796 | PAPER NUMBER |
| | | | MAIL DATE 02/27/2009 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,231

Applicant(s)

REID ET AL.

Examiner

AMINA KHAN

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 18, 2008 has been entered.
2. Claims 1-7 and 9-21 are pending. Claims 1,6,11 and 21 have been amended. Claim 8 has been cancelled.
3. All prior rejections are maintained.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7,9-16 and 18-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ho et al. (WO 99/63021).

Ho et al. teach elastic articles comprising homogeneously branched ethylene polymer wherein good elasticity is maintained after laundering (abstract). Ho further teaches the use of these fabrics in clothing, lab coats, surgical gowns and sports apparel (page 47, paragraph 2). Ho et al. further teach the elastic articles exhibit excellent elasticity at elevated temperatures as well as excellent wet and dry stability (page 8, paragraph 3). Ho et al. further teach woven fabrics (page 49, paragraph 4). Ho further teaches sports apparel and swimsuits (page 3, lines 10-15). Ho further teaches monofilaments (page 49, line 14) and combining elastic and non elastic fibers (page 50, lines 5-10). Ho further teaches irradiating at least 3 megarads of ionizing energy (page 14, lines 10-15). While applicant's claims recite the limitations of hypochlorite or permanganate treatment or mercerization, these are simply product by process steps and the end product is simply still the woven or knitted elastic article.

In the alternative, it would have been obvious that the elastics of Ho et al. would encompass the claimed limitations because Ho et al. teach similar elastic products for similar utilities.

Claims 11-15 and 18-20 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112,2113 and 2114.

Regarding the limitation of uniform or rental uniform, these are simply intended uses it would be obvious to use lab coats and surgical gowns in uniforms or rental uniforms.

7. Claims 1-4,6,7,9,11-15 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830)

Knight et al. teach woven (column 10, lines 45-48) elastic fabrics, which meet the instantly claimed recovery parameters (column 3, lines 20-30; column 8, lines 55-65), comprising homogeneously branched ethylene polymers (column 3, lines 55-60) for making garments such as diapers (column 11, lines 5-15). Knight further teaches

monofilaments (column 10, lines 30-35) and combining non-elastic and elastic fibers (column 10, lines 60-61). While applicant's claims recite the limitations of hypochlorite or permanganate treatment or mercerization, these are simply product by process steps and the end product is simply still the woven or knitted elastic article.

In the alternative, it would have been obvious that the elastics of Knight et al. would encompass the claimed limitations because Knight et al. teach similar elastic products for similar utilities.

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

8. Claims 1-4,6,7,9,11-15 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maugans et al. (US 6,194,532)

Maugans et al. teach elastic woven fabrics, which meet the instantly claimed recovery parameters (column 7, lines 7-10; column 5, lines 40-50), comprising homogeneously branched ethylene polymers (column 5, 50-60) for making garments such as diapers (column 11, lines 35-50). Maugans teaches monofilaments (column 6,

lines 60-65) and combining non-elastic and elastic fibers (column 7, lines 55-60). While applicant's claims recite the limitations of hypochlorite or permanganate treatment or mercerization, these are simply product by process steps and the end product is simply still the woven or knitted elastic article.

In the alternative, it would have been obvious that the elastics of Maugans et al. would encompass the claimed limitations because Maugans et al. teach similar elastic products for similar utilities.

Claims 11-15 and 20 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830) in view of Chi (US 6,666,235).

Knight et al. are relied upon as described in paragraph 7.

Knight et al. do not teach denim.

Chi et al. teach that durable lightweight denim may be produced from cotton and polyolefin blends (column 3, lines 45-60; column 4, lines 25-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce denim from the elastic fibers of Knight because Chi et al. teach that it is well known in the art to do so to produce durable denim fabrics. One of ordinary skill would have been motivated to combine the teachings of the references absent unexpected results.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830) in view of the article "New polyolefin fiber blend makes jeans WR and quick-drying" (Daily News Record, April, 1994).

Knight et al. are relied upon as described in paragraph 7.

Knight et al. do not teach denim.

The article teaches that it was well known in the art to combine cotton and polyolefin to produce denim jeans (column 3, lines 45-60; column 4, lines 25-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce denim from the elastic fibers of Knight because the article that it is well known in the art to do so to produce wrinkle resistant denim fabrics. One of ordinary skill would have been motivated to combine the teachings of the references absent unexpected results.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830) in view of the article "New polyolefin fiber blend makes jeans WR and quick-

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drying" (Daily News Record, April, 1994) and further in view of Rodrigues (US 6,337,313).

Knight et al. and the article are relied upon as described in paragraph 7.

Knight et al. and the article do not teach stone washing.

Rodrigues teaches that it is conventional to stone wash denim and polyolefin blends (column 3, lines 39-46; column 9, lines 35-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce stonewash denim comprising the elastic polyolefins of Knight because Rodrigues clearly teach that it is well known in the art combine similar fabrics and treat them with stonewashing procedures. One of ordinary skill would have been motivated to combine the teachings of the references absent unexpected results.

Response to Arguments

12. Applicant's arguments filed regarding Ho et al., Knight et al., Chi, Rodrigues, the Daily News Record Article and Maugans et al. have been fully considered but they are not persuasive.

The examiner argues that applicants have not provided in the form of experimental data comparing the fabrics of the prior art references to the instantly claimed fabrics demonstrating material differences in the end products. The recitation of US 6,171,441 as a patent teaching these treatments are known methods to alter fabrics is not sufficient. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was

made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*. Applicants arguments regarding the transformative nature of the treatments is conclusory and is not supported by experimental data. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972). The examiner argues that all garments and swimwear and sports apparel are routinely laundered in bleach comprising detergents at the instantly claimed temperatures during the lifetime of their use. The rejections are maintained.

Applicant's arguments regarding the ionizing radiation temperatures of Ho et al. recite at least 3 megarads of ionizing energy, with the highest example showing 12 mrad, while applicant's claims are directed towards 19.2 mrad. Again the examiner argues that applicant has not demonstrated in the form experimental data that the 19.2 mrad would provide a materially different product than taught by Ho et al. Further the values in Ho et al. are not limiting to the invention since any value exceeding 3 megarads is taught. All disclosures of the prior art, including non-preferred embodiment, must be considered. See *In re Lamberti and Konort*, 192 USPQ 278 (CCPA 1967); *In re Snow* 176 USPQ 328 (CCPA 9173). Nonpreferred embodiments can be indicative of obviousness, see *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1989); *In re Lamberti*, 192 USPQ 278 (CCPA 1976); *In re Kohler*, 177 USPQ 399. A

reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982).

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Amina Khan/
Examiner, Art Unit 1796
February 23, 2009

/Lorna M Douyon/
Primary Examiner, Art Unit 1796